

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT L. SHAW,

Appellant,

v.

MEGA INDUSTRIES, CORP.,

Respondents.

DOCKET NUMBER WD75501

Date: July 30, 2013

Appeal from:
Platte County Circuit Court
The Honorable Abe Shafer, IV, Judge

Appellate Judges:
Division Four: James E. Welsh, C.J., Alok Ahuja, J. and Jack R. Grate, Sp. J.

Attorneys:
Jason M. Pottenger, Kansas City, MO, for appellant.
William C. Crawford and Luke R. Hertenstein, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ROBERT L. SHAW

Appellant,

v.

MEGA INDUSTRIES, CORP.,

Respondents.

WD75501

Platte County

Appellant Robert Shaw was injured while working on a construction project known as Zona Rosa Development II in Kansas City (“the Project”). Shaw was an employee of RLS Trucking; RLS was a subcontractor for Respondent Mega Industries Corp. After Shaw settled a workers’ compensation claim for his injuries with RLS, he sued Mega Industries in the Circuit Court of Platte County, claiming that his injuries were caused by Mega Industries’ negligence.

The circuit court entered summary judgment in favor of Mega Industries. It found that Mega Industries was Shaw’s statutory employer under the Workers’ Compensation Law, and that Shaw’s exclusive remedy against Mega Industries for his injuries was therefore through the workers’ compensation system. Shaw appeals.

AFFIRMED.

Division Four holds:

Because Shaw was an employee of one of Mega Industries’ subcontractors on a construction project, Mega Industries is deemed to be Shaw’s “employer” for purposes of the Workers’ Compensation Law under § 287.040.2, RSMo. Under the final sentence of § 287.040.3, however, Mega Industries was not liable to pay any workers’ compensation benefits to Shaw in this case, because Shaw’s immediate employer – RLS Trucking – carried workers’ compensation insurance that was available to compensate Shaw.

Shaw argues that, because Mega Industries faced no liability for workers’ compensation benefits in this case, it cannot take advantage of the Workers’ Compensation Law’s exclusive-remedy provisions in § 287.120. The Missouri Supreme Court rejected this precise argument in *Bunner v. Patti*, 121 S.W.2d 153 (Mo. banc 1938), however. The Supreme Court reaffirmed the holding of *Bunner* in multiple later cases. *Bunner* holds that a general contractor which is an injured worker’s statutory employer retains its status as an “employer,” entitled to the immunity

from common-law lawsuits provided by the Workers' Compensation Law, even if the worker's immediate employer satisfies the injured employee's workers' compensation claim. *Bunner* forecloses Shaw's current lawsuit.

Shaw argues that we should not follow *Bunner* and the other decisions reaching the same result, because those cases were decided prior to the 2005 amendments to the Workers' Compensation Law, which specified that the Law should be strictly construed (as opposed to the rule of liberal construction which applied previously). But in *State ex rel. MSX Int'l, Inc. v. Dolan*, 38 S.W.3d 427, 430 (Mo. banc 2001), the Missouri Supreme Court stated that the *Bunner* rule does not depend on a liberal construction of the Workers' Compensation Law. We would reach the same result as in *Bunner* even if the earlier precedent did not exist, based on the plain words of the relevant statutory provisions.

The immunity provided by § 287.120 has never been interpreted to require that the injured worker actually receive workers' compensation benefits from the employer. On the contrary, if an "injury" comes within the definition of the term "accident" as defined in section 287.020.2, then it is included within the exclusivity provisions of the Workers' Compensation Law, and recovery can be had, if at all, only under the terms of the Law. There are many reasons why an employee may fail to recover worker's compensation benefits from his employer for an accidental workplace injury. But an employee's failure to prove up a winning workers' compensation claim does not make the employer liable for common-law damages.

Before: Division Four: James E. Welsh, C.J., Alok Ahuja, J. and Jack R. Grate, Sp. J.

Opinion by: Alok Ahuja, Judge

July 30, 2013

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